(Mass.) 99. Because a release after the loss cuts off this right to a remedy over on payment of the insurance, it discharges the company. *Dilling* v. *Draemel*, 16 Daly (N. Y.) 104. The insurance company, however, is entitled only to the right the insured had. And if a contract made before loss prevents the insured from suing the wrongdoer, the company has no claim against the latter. *Savannah Fire & Marine Ins. Co.* v. *Pelzer Mfg. Co.*, 60 Fed. 39. Upon paying the insurance, the company is subrogated to the rights of the insured. *Liverpool & Great Western Steam Co.* v. *Phenix Ins. Co.*, 129 U. S. 397, 462. Yet since the claim is still in the name of the insured, it would seem that a release for consideration, given by him to a wrongdoer ignorant of the payment, should be effective. But if the release were gratuitous, it should be set aside. A release taken with knowledge of the payment, as in the principal case, is a fraud on the insurance company and despite consideration is therefore void. *The Monmouth County Mut. Fire Ins. Co.* v. *Hutchinson, etc., Transportation Co.*, 21 N. J. Eq. 107.

JOINT TENANCY — WHETHER JOINT TENANCY OR TENANCY IN COMMON CREATED. — An owner of a term for years granted it by deed to A and B, "their executors, administrators, and assigns." *Held*, that they take as joint tenants. *Goddard* v. *Lewis*, 25 T. L. R. 813 (Eng., K. B. D., July 31, 1909). See NOTES, p. 214.

JUDGMENTS — FOREIGN JUDGMENTS — EQUITABLE DECREE AS A CAUSE OF ACTION IN ANOTHER STATE. — In divorce proceedings between A and B, both of whom were before it, a Washington court ordered that B convey to A certain land situated in Nebraska. B fraudulently conveyed the land to C who had notice of the decree. Relying on the Washington decree, A brought a bill in a Nebraska court to quiet title to the land, but was denied relief on the ground that the foreign court had no jurisdiction. *Held*, that the Nebraska decision does not deny full faith and credit to the foreign decree. *Fall* v. *Eastin*, U. S. Sup. Ct., Nov. 1, 1909.

Justice Holmes, in a concurring opinion, intimates that the foreign decree should have the same effect on the equitable obligations of the parties and their privies as a foreign decree for specific performance of a contract. But he points out that whatever the result reached by the court on this point, the requirements of full faith and credit have been complied with. For a discussion of the principles involved, see 21 HARV. L. REV. 210.

QUASI-CONTRACTS. — NATURE AND SCOPE OF THE OBLIGATION — RECOVERY FROM ESTATE OF MONEY LOANED TO EXECUTRIX. — An executrix, having mismanaged an estate, was forced to borrow money of the plaintiff, in order to pay taxes on realty belonging to the estate. After the executrix became insolvent, the plaintiff sued in equity to recover the loan. *Held*, that he can recover directly from the estate. *Stillman* v. *Holmes*, 54 Ohio L. Bull. 84, No. 44 (Oh., Franklin County Ct., Sept. 20, 1909).

Since an executor has no authority to borrow money, the plaintiff had no right at law against the estate. *Merchants' Nat'l Bank* v. *Weeks*, 53 Vt. 115. And since the plaintiff was neither liable for nor interested in the payment of the taxes, he could not have been subrogated to the rights of the tax collector. *Brown* v. *Hooks*, 65 S. E. 780 (Ga.). But as an executor may ordinarily be reimbursed for money spent for the benefit of the estate, one lending him money has a remedy by way of equitable attachment of the executor's claim against the estate. *Williamson's Appeal*, 94 Pa. St. 231. See 14 HARV. L. REV. 67. But this procedure is impossible in the case under discussion, because an executor by misconduct loses his right to reimbursement. *In re Johnson*, 15 Ch. D. 548. The court, however, seems justified in holding that resort to these derivative remedies is here unnecessary; for since it is unconscionable for the estate to profit at the plaintiff's expense, the estate is under a quasi-contractual obligation to reimburse him.

Deery v. *Hamilton*, 41 Ia. 16. In accordance, however, with the rule that there is no such obligation to repay money paid under a mistake of law, one lending money because of a mistaken notion as to an executor's authority to borrow, cannot recover. *Merchants' Nat'l Bank* v. *Weeks*, *supra*.

QUASI-CONTRACTS — RIGHTS ARISING FROM MISTAKE OF FACT — PAYMENT IN ANTICIPATION OF A NON-EXISTING LEGAL LIABILITY. — K. & Co. in New York notified the plaintiff in London that they had credited a certain amount to a third party, and requested him to recoup them, according to their prior agreement. Before making any payments to the third party K. & Co. became insolvent. After the insolvency, the plaintiff, in anticipation of his legal liability, deposited the requested amount to K. & Co.'s account with the defendants in London. Later that day he learned of the insolvency and notified the defendants. They had merely made an entry of the credit to the account of K. & Co. K. & Co. were largely indebted to the defendants, who refused to refund to the plaintiff. *Held*, that as the plaintiff paid the money under a mistake of fact, he can recover. *Kerrison* v. *Glyn, Mills, Currie & Co.*, 26 T. L. R. 37 (Eng., K. B. D., Oct. 28, 1909).

Where money has been paid under a mistake of fact, an action for money had and received will lie. *McLean County Bank* v. *Mitchell*, 88 Ill. 52. And the payee is liable to refund, even though in ignorance of the mistake he has paid the money to another. *Continental Caoutchouc, etc., Co.* v. *Kleinwort Sons & Co.*, 20 T. L. R. 403. Though the ground for recovery is usually alleged to be in quasi-contract, the underlying principle of the relief given is equitable. In fact the case is analogous to those where money is received for a particular purpose which fails. See *Cutler* v. *Am. Exchange Nat. Bank*, 113 N. Y. 593. There the depositary becomes liable as a constructive trustee. *Stumore* v. *Campbell & Co.*, [1892] 1 Q. B. 314. And yet an action on the common counts lies. *Ashpitel* v. *Sercombe*, 19 L. J. Exch. 82. The mistake must be as to a material fact. *Chambers* v. *Miller*, 13 C. B. N. S. 125. And when the plaintiff paid, he must not have doubted his liability. *McArthur* v. *Luce*, 43 Mich. 435. His claim rests on the fact that the defendant is being unjustly enriched at his expense. To prove that the enrichment is at his expense, the plaintiff must show a failure of consideration. *Taylor* v. *Hare*, 1 B. & P. N. R. 260. And to prove that it is unjust, the plaintiff must show that he was neither legally nor morally bound to pay. *Franklin Bank* v. *Raymond*, 3 Wend. (N. Y.) 69. It is submitted that the above theories are properly applicable to the principal case, which is thoroughly in accord with public policy.

LANDLORD AND TENANT — RENT — STATE INTERFERENCE WITH BENEFICIAL USE OF PREMISES. — Premises were leased for occupation "as a saloon and not otherwise." During the term the sale of intoxicating liquor was prohibited by law. The lessee continued to occupy the premises. The lessor sued for rent which accrued after the prohibitory law had gone into effect. *Held*, that he can recover. *O'Byrne* v. *Henley*, 50 So. 83 (Ala.).

No rent need be paid after a natural catastrophe has totally destroyed the leased premises. *Graves* v. *Berdan*, 26 N. Y. 498. *Contra*, *Izon* v. *Gorton*, 5 Bing. N. Cas. 501. The same is true if the state, by eminent domain, takes title to the whole of the premises. *Corrigan* v. *City of Chicago*, 144 Ill. 537. After either of these events, the estate demised, out of which the rent is to issue, no longer exists. But by the weight of authority physical damage short of total destruction does not alter the lessee's liability for rent. *Hilliard* v. *The New York & Cleveland Gas Coal Co.*, 41 Oh. St. 662. By the minority view, the rent under such circumstances is apportioned, on the theory that the diminution of the beneficial use of the premises causes a failure of consideration for the rent. See *Wattles* v. *South Omaha Ice & Coal Co.*, 50 Neb. 251. But since a lease is not a contract of continuing performance, but the grant of an estate for years, there